

POLICY NOTE

THE CIVIL LEGAL AID (SCOTLAND) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2017

SSI 2017/310

The Scottish Ministers propose to make the regulations above in exercise of the powers conferred by sections 33(2)(a) and (3) and 36(1) and (2)(a) and (c) of the Legal Aid (Scotland) Act 1986 and all other powers enabling them to do so.

Policy Objectives

The policy objective of this instrument is to ensure calculation of the fees of solicitors and counsel in relation to proceedings in the First-tier Tribunal for Scotland. The simple procedure fee schedule will apply to solicitors. The fees for counsel will be the same as it was before the sheriff court. The second phase of the roll out of simple procedure would have applied to private rented housing cases before the sheriff, so it is appropriate to apply these fees. The fees for counsel will be the same as it was before the sheriff court. It amends regulation 2A of the 1989 Regulations to specify the Auditor of the Court of Session as the relevant auditor in relation to legal aid accounts in the First-tier Tribunal for Scotland.

It provides for proceedings in the First-tier Tribunal for Scotland to be treated as distinct proceedings for the purposes of legal aid. This is required to distinguish these distinct proceedings from others and means it must be the subject of separate legal aid applications. It also ensures the requirement of prior approval from the Scottish Legal Aid Board for the employment of counsel with regard to these types of cases.

Consultation

A consultation in relation to the transfer of jurisdiction which included a section on legal aid took place between January and March 2017 with interested parties. There were 21 responses to this consultation. The [responses](#) and an [independent analysis report](#) are available on the Scottish Government website. The Law Society of Scotland were consulted as part of the public consultation however did not comment.

Impact Assessments

An equality impact assessment has been completed on the draft SSI and is attached. There are no equality impact issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that civil legal aid will be available in the First-tier Tribunal for Scotland Housing and Property Chamber.

When the Government introduced the Bill for the Housing Act 2014, it estimated that the cost of legal assistance for the 700 private rented housing cases each year that would transfer from

the Courts to the Tribunals would be about £25,000 – comprising £14,000 for Advice and Assistance, and £11,000 for Civil Legal Aid, based on continuing the same form of legal assistance in the First-Tier Tribunal as is currently available for these cases in the Courts, as is the aim. This takes into account that legal aid will not be available for landlord registration.

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